



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,157	04/01/2004	John Garrett Tomlinson	7393-002	9041

4678 7590 08/29/2007
MACCORD MASON PLLC
300 N. GREENE STREET, SUITE 1600
P. O. BOX 2974
GREENSBORO, NC 27402

EXAMINER

CHEUNG, VICTOR

ART UNIT	PAPER NUMBER
----------	--------------

3714

MAIL DATE	DELIVERY MODE
-----------	---------------

08/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/816,157

Applicant(s)

TOMLINSON ET AL.

Examiner

Victor Cheung

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/01/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original non-provisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C.

112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 10/679/735, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Accordingly, claims 1-16 are not entitled to the benefit of the prior application.

Claim Objections

2. Claims 8-11 are objected to because of the following informalities:

- Claim 8, Line 5: "the individual factor" should be --individual factor--.
- Claim 8, Line 7: "teacher qualification rating" should be --teacher qualification documentation rating--.

Art Unit: 3714

- Claim 9, Line 2: "the documentation for self-administration of the system" should be – the factor documentation for self-administration of the rating system--.
- Claim 10, Lines 1-2: "a rating agency administering the rating" should be –administering the rating by a rating agency--.
- Claim 11, Line 4: "the program" should be –the computer executable program code--.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-7 and 11-16 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.

Re Claim 1: Claim 1 is drawn to a system; however, there are no system components claimed. As can be most reasonably interpreted, the claim is drawn to a computer program for producing a qualification score. However, a computer program must be encoded on a computer readable medium that can function with a computer to produce a useful, concrete, and tangible result. Claim 1 does not include these properties. Additionally, claim 1 includes limitations to a system (line 2) and a method (lines 5-6). However, 35 U.S.C. 101 allows a single claim to be drawn to a single statutory class.

Claims 2-7 do not resolve the deficiencies of claim 1.

Re Claim 11: Claim 11 is drawn to “a computer readable medium and/or computer executable program code residing on a computer readable medium and/or a computer.” Such a limitation must include a computer program encoded on a computer readable medium that can function with a computer to produce a useful, concrete, and tangible result. A computer readable medium residing on a computer readable medium does not achieve this result. A computer readable medium residing on a computer does not achieve this result. A computer executable program code residing on a computer does not achieve this result.

Additionally, there is no result present. The limitation of lines 8-9 (“wherein...”) only constitutes an intended use of the information relating to the computer executable program code and does not result in any structural limitations of the computer readable medium and/or computer executable program code. Thus the information relating to the program is non-functional descriptive material, and not statutory under 35 U.S.C. 101.

Even so, the result of producing a qualification score is arguably useful and concrete, but is not a tangible result. The qualification score is just a value, “an idea”, of a calculation and is thus not a “real world” result.

Claims 12-13 do not resolve the deficiencies of claim 11.

Re Claim 14: Claim 14 is drawn to “a computer readable medium and/or computer executable program code residing on a computer readable medium and/or a computer.” Such a limitation must include a computer program encoded on a computer readable medium that can function with a computer to produce a useful, concrete, and tangible result. A computer readable medium residing on a computer readable medium does not achieve this result. A computer readable medium residing on a computer does not achieve this result. A computer executable program code residing on a computer does not achieve this result.

Claims 15-16 do not resolve the deficiencies of claim 14.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-7 and 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claim 1: Claim 1 is drawn to a system for rating teacher qualification. However, there does not appear to be any components of the system claimed.

Re Claim 1: Claim 1 is drawn to a system for rating teacher qualification. However, claim 1 also includes method limitations of “matrix factor documentation inputted into the rating system” and “teacher experience documentation inputted into the rating system” in lines 3-4. Similarly, dependent claim 5 includes “assigning points from a points scale based on predetermined scale criteria.” It is unclear if a system or a method is being claimed.

Re Claim 7: It is unclear what “the documentation” of line 1 is referring to.

Re Claim 7: It is unclear how “professional development” is a type of documentation.

Re Claims 11 and 14: It is unclear how a computer readable medium can reside on a computer readable medium.

Claims 2-6, 12-13, and 15-16 are rejected as being dependent on claims 1, 11, and 14.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr (US Patent Application Publication No. 2003/0229510) in view of New No Child Left Behind Flexibility (<http://web.archive.org/web/20040320220325/http://www.ed.gov/nclbmethods/teachers/hqtflexibility.pdf>; hereinafter "NCLB").

Re Claim 1: Kerr discloses a rating system based on a matrix of factors with factor weighting, including matrix factor documentation, experience documentation, and wherein the matrix factor documentation and experience documentation are weighted and used to produce a qualification score (Paragraph 72).

However, Kerr does not disclose the rating system used for teachers, or using teacher experience documentation.

NCLB teaches that the teaching profession is subject to the scrutiny of employing qualified teachers (Pages 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the rating system for rating teacher qualification and include teacher experience documentation such that students benefit from learning from a highly qualified teacher.

Art Unit: 3714

Re Claim 2: Kerr discloses matrix factor documentation that is selected from the group consisting of objective documentation, subjective documentation, and combinations thereof (Paragraph 72).

Re Claim 3: Kerr discloses that educational background and academic qualifications can be important (Paragraph 72).

Re Claim 4: Kerr, in view of NCLB, discloses the limitations of claim 3 above.

However, Kerr does not disclose HOUSSE requirements.

NCLB teaches the use of HOUSSE requirements (Page 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use HOUSSE requirements, thereby providing a standard method of teacher evaluation.

Re Claim 5: Kerr discloses assigning points from a points scale based on predetermined scale criteria (Paragraph 72).

Re Claim 6: Kerr discloses documentation including certified documents and licensing documents (Paragraph 41).

Re Claim 7: Kerr, in view of NCLB, discloses the limitations of claim 6 above.

However, Kerr does not specifically disclose transcripts, thesis, reference letters, and professional development.

NCLB discloses diplomas, certification, licensure, teaching experience, professional development, knowledge (Page 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the documents such that tangible proof of the teacher's qualification is acquired.

Re Claim 8: Kerr discloses providing a rating system based on a matrix of factors with factor weighting, inputting factor documentation, determining the individual factor and total factor points based on the inputted documentation, and determining the qualification rating based on the total factor points (Paragraph 72).

However, Kerr does not specifically disclose a teacher qualification rating.

NCLB teaches that the teaching profession is subject to the scrutiny of employing qualified teachers (Pages 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the rating system for rating teacher qualification and include teacher experience documentation such that students benefit from learning from a highly qualified teacher.

Re Claim 9: Kerr discloses that the prospective employee is able to input part of the documentation (Paragraph 71).

Re Claim 10: Kerr discloses that an agency administers the rating (Paragraph 72).

Re Claims 11-16: Note that claims 11-16 are drawn to a computer readable medium and program code for the elements of claims 8-10, each of which have been discussed above.

Kerr discloses computer readable mediums and program code (Paragraphs 13-21).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Cohen (US Pub 2007/0143167) discloses a rating system for selecting a candidate for a specific job.
- Clark et al. (USPN 5,164,897) disclose a method for selecting personnel including qualification factors with certain criteria.
- Goldman et al. (USPN 1,432,177) disclose a system for rating employees including points scales.
- Barton (US Pub 2002/0046074) disclose a rating system including factors such as education, relevant experience, background, employment history, etc.
- Sobotka et al. (USPN 5,197,004) disclose a rating system including weighting factors.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Cheung whose telephone number is (571) 270-1349. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VC

Victor Cheung
August 22, 2007



Robert Pezzuto
Supervisory Patent Examiner
Art Unit 3714